Supreme Court, U.S.
FILED
JAN 6 1992
OFFICE OF THE CLERK

(2)

NO. 91-912

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1991

JOSEPH J. ULVIN, DORIS J. ANDERSON, LEO J. ANDERSON, MARJORIE L. BETTS, DONALD FEROE, WAYNE KEPLINGER and KATHERINE KOENIG,

Petitioners,

v.

NORTHWESTERN NATIONAL LIFE INSURANCE CO.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

I. WHETHER SIX PARTICIPANTS IN A SPECIAL VOLUNTARY EARLY RETIREMENT PROGRAM, NONE OF WHOM FILED A TIMELY CHARGE OF DISCRIMINATION, CAN RELY INSTEAD ON THE CHARGE OF A PERSON WHO WAS NOT ELIGIBLE FOR THE SPECIAL VOLUNTARY EARLY RETIREMENT PROGRAM AND WHO DID NOT MENTION THE PROGRAM IN HIS CHARGE.

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RESPONDENT'S BRIEF IN OPPOSITION

Respondents respectfully request that this Court deny the Petition for Writ of Certiorari seeking review of the Eighth Circuit's opinion in this case.

OPINIONS BELOW

The opinion of the Court of Appeals is reported at 943 F.2d 862. The opinion of the district court has not been reported.

STATEMENT

Doris Anderson elected to participate in the Special Voluntary Early Retirement Program offered by Northwestern National Life Insurance Company ("NWNL")[1] from September 14 to October 30, 1987. On October 4, 1988, Anderson filed a charge of discrimination with the Minnesota Department of Human Rights ("MDHR") which was cross-filed with the Equal Employment Opportunity Commission ("EEOC"). Respondent's Appendix at 1a. The charge alleged that Anderson was coerced into accepting early retirement. Doris Anderson then filed suit, based upon the same allegations as those contained in her charge, on November 2, 1988. Petitioners' Appendix at 27a. Anderson was joined in the suit by Joseph Ulvin, a former NWNL employee not eligible for the Special Voluntary Early Retirement Program, who was alleging that he was demoted and terminated because of his age.

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1. Pursuant to Supreme Court Rule 29.1, the parent company and all wholly owned subsidiaries of respondent are as follows: Northwestern National Life Insurance Company is a wholly-owned subsidiary of the NWNL Companies, Inc., which is a publicly-traded company. There are no additional subsidiaries of the NWNL Companies, Inc. All subsidiaries of Northwestern National Life Insurance Company are wholly-owned except for SelectCare Health Network, Inc., a California corporation which is 50% owned by NWNL Benefits Corp., a wholly-owned subsidiary of Northwestern National Life Insurance Company, and 50% by Scripps Clinic in California.

Between November 2, 1988 and December 12, 1989, nine other former employees attempted to "opt-in" to the Anderson suit by filing Consent to Join Lawsuit forms pursuant to 29 U.S.C. § 216(b). Petitioners Leo J. Anderson, Donald Feroe, Wayne Keplinger, and Katherine Koenig were among the nine plaintiffs who opted-in during this period.

The trial court then allowed Ulvin and Anderson to send notice to present and former NWNL employees, soliciting additional participants in the lawsuit. Forty-three plaintiffs, including petitioner Marjorie L. Betts, attempted to join Anderson's suit by filing Consent to Join Lawsuit forms.

On June 22, 1990, NWNL moved for partial summary judgment dismissing the claims of twenty-four plaintiffs, including the petitioners other than Ulvin. The Honorable Paul A. Magnuson, United States District Court for the District of Minnesota, ruled that Doris Anderson's charge challenging the Special Voluntary Early Retirement Program was not timely, that no other charge had been filed by any other early retiree, and that the charge of Joseph Ulvin was not sufficient to challenge the Special Voluntary Early Retirement Program. Petitioners' Appendix at 15a-16a. Judge Magnuson therefore dismissed the claims of all early retirees.

Petitioners appealed the district court's ruling to the United States Court of Appeals for the Eighth Circuit, arguing that the district court's dismissal of their claims was contrary to the single filing rule. The Eighth Circuit affirmed both the single filing rule and the district court's dismissal of the early retirees pursuant to that rule. In affirming, the court first noted that no participant in the Special Voluntary Early Retirement Program had filed a timely charge with the EEOC challenging the program, and that the only hope for the participants in the Special Voluntary Early Retirement Program was to rely on the charge of Joseph Ulvin.

The court then noted that Ulvin had filed a timely charge alleging class-based discrimination on the basis of age by NWNL. The court examined its precedent and determined that Eighth Circuit precedent "only answered the narrow question of whether this circuit would recognize the single filing rule. The case did not address the more difficult question of whether there is any limit to the nature or type of claims opt-in plaintiffs can raise while relying upon another plaintiff's filing." Petitioners' Appendix at 6a.

The court went on to examine the specific allegations of class-wide discrimination made in Ulvin's charge and to determine whether these particular opt-in plaintiffs were within the scope of the class alleged in the charge. Applying the single filing rule to the facts of this case, the Eighth Circuit found that Ulvin's charge neither put NWNL on notice of allegations of discrimination in the Special Voluntary Early Retirement Program, nor provided a basis for the EEOC to conciliate with respect to that program. The court held, therefore, that "Ulvin's EEOC charge was too narrow to support the discrimination claims of the early retirees." Petitioner's Appendix at 7a. Petitioners now seek review by this Court of the application of the single filing rule to their individual factual situation.[2]

---

2. The Eighth Circuit opinion was filed on September 3, 1991. Petitioners filed their Petition for Writ of Certiorari on December 2, 1991, and served the Petition upon Counsel of Record by mail. The Petition, post-marked December 3, 1991 in Washington, D.C., was received by Counsel of Record on December 6, 1991. Respondent's Brief in Opposition is, therefore, required to be filed Jan. 6, 1992. Supreme Court Rule 15.2.

REASONS FOR DENYING WRIT

I. THE COURT OF APPEALS CORRECTLY AFFIRMED THE DISMISSAL OF SIX PARTICIPANTS OF A SPECIAL VOLUNTARY EARLY RETIREMENT PROGRAM WHO FAILED TO FILE A TIMELY CHARGE WITHIN 300 DAYS OF THE CLOSE OF THE ENROLLMENT PERIOD FOR THE PROGRAM.

A. The Eight Circuit Correctly Applied Well Established Authority to the Facts of This Case.

The Eighth Circuit followed well established authority in dismissing the petitioners' claims. After specifically recognizing the single filing rule, the Eighth Circuit went on to consider the issue presented by the Petition for Writ of Certiorari: whether these particular plaintiffs can rely on Ulvin's charge to sustain their early retirement claims, having failed in their attempt to sue NWNL based upon the untimely charge of early retiree Doris Anderson.[3]

---

3. Doris Anderson's untimely charge specifically mentions the early retirement program and is based upon the claimed discrimination allegedly involved in that program. Respondent's Appendix at 1a. It was not until Doris Anderson filed her charge that the EEOC and NWNL were first put on notice that any participant in that voluntary program was alleging that the program was not truly voluntary. Anderson's charge did encompass the early retirees. *Kloos*, 799 F.2d at 400. Anderson's charge, however, was not timely. 29 U.S.C. § 626(d), 633(b); *Delaware State College v. Ricks*, 449 U.S. 250 (1980); *Wilson v. Westinghouse Electrical Corp.*, 838 F.2d 286 (8th Cir. 1988); *Ulvin v. Northwestern National Life Insurance Company*, 943 F.2d 862 (8th Cir. 1991).

The Eighth Circuit correctly set forth the standard in all circuits for scope of a charge. The court stated:

> We stated in *Kloos* that the administrative filing requirement serves two important purposes. It gives the EEOC an opportunity to eliminate unlawful practices through informal conciliation and it provides employers with formal notice of the charges being brought against them. Keeping these purposes in mind, there must be some limit to what claims an opt-in party can raise when relying on the administrative filing of another. Certainly, when the filed charge is quite specific as to the scope of the class claim it raises, opt-in plaintiffs should not be permitted to raise claims that are far outside of that scope. Otherwise, the purposes of requiring an administrative filing would be thwarted; the EEOC would not be able to achieve any meaningful conciliation and employers would not be on notice as to the nature of the potential claims of opt-in plaintiffs.

Petitioner's Appendix at 6a-7a.

The court then made a specific factual analysis of the charge and the early retirees to determine if the early retirees were within the scope of the charge. The Eighth Circuit decided that these particular plaintiffs are not within the scope of the charge brought by Ulvin. The court stated:

> Here, Ulvin's charge complained only that Northwestern demoted and subsequently fired him because of age. Nowhere in the charge did Ulvin mention Northwestern's early retirement program, or that Northwestern was coercing older employees into accepting early retirement. Ulvin was not eligible to participate in Northwestern's early retirement

> program. Northwestern terminated Ulvin seven days before the deadline for potential early retirees to announce their decision whether or not to retire. No early retirees filed a complaint with the EEOC until September 30, 1988, almost one year after the deadline for selecting early retirement had passed. Thus, Ulvin's EEOC charge did not alert Northwestern to the claims of the early retirees, nor did it create the possibility that the EEOC or Northwestern would attempt to conciliate the claims of early retirees.
>
> Ulvin's EEOC charge was too narrow to support the discrimination claims of the early retirees. For this reason, we affirm the district court's decision to dismiss Doris Anderson and the other five early retirees from Ulvin's class action.

Petitioner's Appendix at 7a. The Eighth Circuit correctly followed precedent in all circuits in making that ruling.

To file a civil suit under the ADEA, a private plaintiff must first file an administrative charge with the EEOC. 29 U.S.C. § 626(d), 633(b). The general rule is that a charge filed with the EEOC by a representative plaintiff will satisfy the notice requirement for others similarly situated, if the charge alleges discrimination of a class-wide nature and the charge fulfills the purposes of agency notice with respect to the persons attempting to rely on the charge. *See, e.g., Kloos v. Carter-Day Company*, 799 F.2d 397 (8th Cir. 1986). Plaintiffs may raise in court only those claims that are "like or related to" the substance of the complainant's charge before the EEOC. *Satz v. ITT Financial Corp.*, 619 F.2d 738 (8th Cir. 1980).

The purpose of the notice requirement is two-fold: 1) to provide the EEOC an opportunity to eliminate the alleged unlawful practices through informal methods of conciliation; and 2) to provide formal notice to the employer of the charges that have been made against it. *Kloos*, 799 F.2d at 400. *See also Boyd v. Ozark Airlines*, 568 F.2d 50, 54 n.5 (8th Cir. 1977) (a class action may be maintained if the named plaintiff's charge gives the defendant an opportunity for conciliation with respect to the issues raised in court). As the Eighth Circuit recognized, Ulvin's charge fulfilled neither of these purposes with respect to the Special Voluntary Early Retirement Program. Nothing in the charge alerted either the EEOC or NWNL that Ulvin was attempting to allege that a voluntary program for which he was not even eligible was discriminatory.

Ulvin's EEOC charge challenged his reassignment and subsequent termination, alleging that his treatment was part of a pattern or practice of discrimination on the basis of age at NWNL. Joseph Ulvin's charge does not mention early retirement. Ulvin was not even eligible for the early retirement program. Ulvin identifies the date for the discrimination as October 23, 1987, a date which is before the Special Voluntary Early Retirement Program participants were required to elect whether to participate in the program. At the time NWNL received Ulvin's charge, no one eligible for the Special Voluntary Early Retirement Program had complained of alleged discrimination in the program, nor did Ulvin make that complaint. Ulvin's notice neither gave the EEOC a reasonable opportunity to resolve any discrimination claims related to the Special Voluntary Early Retirement Program by informal means, nor did it afford NWNL adequate notice of the conduct alleged to be discriminatory. Ulvin's charge, therefore, did not encompass the early retirees. *Kloos*, 799 F.2d at 400.

B. No Conflict Exists Among the Circuits On the Issue Addressed by the Eighth Circuit.

Each circuit that has addressed the issue has adopted the single filing rule, agreeing that a single charge may be the basis of a class claim. The Eighth Circuit accepted the single filing rule in this case. The circuits also agree that limits apply to the claims that can be raised relying on a particular class based charge. None of those circuits has issued a ruling inconsistent with the Eighth Circuit's decision that these particular plaintiffs are not within the scope of the class alleged.

The primary authority relied upon by petitioners in their unsuccessful effort to create the appearance of a conflict between the Circuits is *Tolliver v. Xerox Corp.*, 918 F.2d 1052 (2d Cir. 1990). In *Tolliver*, the Second Circuit faced the issue of whether the single filing rule was available to plaintiffs filing individual actions after having been dismissed from a representative action when the class was decertified. The court found that plaintiffs could benefit from the single filing rule without joining an existing representative action. The court then addressed the issue of whether the charges in that case were appropriate for invoking the single filing rule. Following *Kloos*, the court found that the charges were appropriate since each alleged that Xerox discriminated against persons over the age of forty (40), in the same way, as a class. The court was not faced with the issue of whether the particular plaintiffs were within the scope of the charge, since all were terminated as part of the extensive reduction in force challenged in the charges. The court determined only that the single filing rule applied to individual plaintiffs not joining a representative action, and that these charges notified Xerox that a class of persons including the plaintiffs was affected.

The Eighth Circuit's reasoning comports precisely with that of the Second Circuit. The Second Circuit stated that "In assessing the adequacy of a charge for purposes of the single filing rule, the question is whether it can fairly be said that no conciliatory purpose would be served by filing separate EEOC charges." *Tolliver*, 918 F.2d at 1058 (citation omitted). The court found in that particular factual situation that it would be wasteful to "flood the EEOC with repetitive notices . . . all making the same claim already lodged with the Commission as a classwide grievance by the *Lusardi* named plaintiffs." *Tolliver*, 918 F.2d at 1059.

In this case, the Eighth Circuit found that a conciliatory purpose would be served by the filing of a separate EEOC charge, since the EEOC and NWNL could not conciliate regarding a voluntary program for which Ulvin was not eligible based upon Ulvin's charge. Repetitive notices were not required by the Eighth Circuit. All that was required is what actually occurred: the filing of one charge by Ulvin on behalf of persons terminated in the reduction in force and one charge by Doris Anderson on behalf of the participants in the Special Voluntary Early Retirement Program. That Anderson's charge was not timely filed does not alter the fact that it was necessary to file the charge.

None of the other cases cited by petitioners conflict with the rule in the Second and Eighth Circuits. None of those courts faced the issue of whether a particular group of plaintiffs were within the scope of the class alleged in the charge. In *Bean v. Crocker National Bank*, 600 F.2d 754 (9th Cir. 1990); *Anderson v. Montgomery Ward & Co., Inc.*, 852 F.2d 1008 (7th Cir. 1988); and *Mistretta v. Sandia Corp.*, 639 F.2d 588 (10th Cir. 1980), the courts found that the charges were appropriate for use of the single filing rule because the charges alleged class based discrimination. In each case the parties seeking to rely on the charge clearly fit within the

scope of the class alleged. There was no issue in either case of whether particular plaintiffs were within the scope of the class alleged. In *Lockhart v. Westinghouse Credit Corp.*, 879 F.2d 43 (3d Cir. 1989), the court found the charge inappropriate for use of the single filing rule because the charge alleged only individual, not class, discrimination. No issue of the scope of the class alleged was presented, because no class was alleged.

The determination of whether particular plaintiffs can properly rely on a class based charge is a fact specific determination not appropriate for review under this Court's certiorari jurisdiction. There is no general overriding principle which this Court could prescribe for such cases. This case does not present any important issue not previously addressed by this Court, as petitioners try to suggest. This case presents only a specific factual determination of whether these particular plaintiffs are within the class alleged by Ulvin's charge. This specific factual determination is reached based on well settled law in all the Circuits. This case does not present an opportunity for this Court to adopt a broad principle to apply to more than the parties involved in this case.[4]

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4. Petitioner's attempt to create an issue regarding alleged confusion among the courts as to the applicability of Rule 23 to representative actions under the ADEA. Such an issue is not presented on this record as the Eighth Circuit neither referred to nor relied on Rule 23. Further, the result in this case is the same under Rule 23 precedent as under ADEA precedent. In *General Telephone Company v. Falcon*, 457 U.S. 147, 157-158, 72 L. Ed. 2d 740, 750, 102 S.Ct. 2364 (1982), this Court noted that individual allegations of discrimination do not establish either that a policy of discrimination by a company exists, or that any one individual's claim will share common questions of law or fact with another individual's claim. Further, a representative plaintiff

(continued...)

C. The Eighth Circuit Decision Is Also Consistent with Congressional Intent.

The cases regarding the single filing rule balance the important Congressional purpose for requiring a charge with the right of plaintiffs to take collective action against their employer. As the Eighth Circuit stated, the charge requirement is important, giving the EEOC the opportunity to obtain compliance with the ADEA by informal means, and informing the employer of the practices and policies which allegedly discriminate. All circuits recognize the importance of the charge requirement. *See, e.g., Vance v. Whirlpool Corp.*, 707 F.2d 483, 487 (4th Cir. 1983), *supp. op.* 716 F.2d 1010 (1983), *cert. denied* 465 U.S. 1102 and 467 U.S. 1226 (1984); *Bihler v. Singer Co.*, 710 F.2d 96, 99 (3d Cir. 1983). *See also Gilmer v. Interstate/Johnson Lane*, 500 U.S. ___, 115 S. Ct. 1647 (1991).

Congress also considered the charge requirement important to the purpose of the ADEA. When the language of the ADEA was changed so that a charge must be brought, rather than an individual file notice of intent to sue, Congress indicated that:

> This change in language is not intended to alter the basic purpose of the notice requirement, which is to provide the Department with sufficient information so that it may notify prospective defendants and to provide the Secretary with an opportunity to

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4.(...continued)
can only represent other plaintiffs if the other plaintiffs' claims present issues that the representative plaintiff has standing to raise. *Oatis v. Crown Zellerbach Corp.*, 398 F.2d 496, 498 (5th Cir. 1968); *Briggs v. Anderson*, 796 F.2d 1009, 1018 (8th Cir. 1986).

> eliminate the alleged unlawful practices through informal methods of conciliation. Therefore, the conferees intend that the 'charge' requirement will be satisfied by the filing of a written statement which identifies the potential defendant and generally describes the action believed to be discriminatory.

H.R. Conf. Rep. No. 950, 95th Cong., 2d Sess., *reprinted in 1978 U.S. Code Cong. & Admin. News* 504, 528, 534.

The Eighth Circuit opinion complies precisely with this Congressional mandate. Ulvin's charge does not even generally describe the Special Voluntary Early Retirement Program, or any alleged discrimination other than position eliminations. The Eighth Circuit decision gives effect both to the rule that every individual plaintiff need not file her own charge, and to the important purpose of requiring a charge. That decision is well reasoned, and based on existing precedent in all circuits. That decision does not present any basis upon which the Court should grant certiorari.

II. THE ISSUES IDENTIFIED IN THE PETITION ARE NOT PRESENT IN THIS CASE.

Petitioners attempt to raise two issues which are not, in fact, present. Petitioners argue that the relationship of Rule 23 to an ADEA representative action and the effect of court approved notice on persons opting into an ADEA action are both at issue. Neither issue is present in this case. The Eighth Circuit did not rely upon Rule 23 in its opinion. No issue as to the proper membership of an ADEA class or the applicability of Rule 23 requirements to such a class, was presented to the Eighth Circuit. Petitioners' argument regarding the alleged confusion in the courts with respect to the applicability of Rule 23 requirements, while it may be academically interesting, is not relevant to a determination of

whether to grant certiorari in the case actually before this Court.

Petitioners also claim that court-approved notice was sent in this action, and that petitioners attempted to opt-in to the litigation in response to that notice, which should allow them to rely on Ulvin's charge. This factual situation, however, is not before the Court. Only petitioner Majorie L. Betts opted-in to the action after receiving notice. All of the other petitioners opted-in to the action before any notice was sent. Further, petitioners did not raise below any issue with respect to the court-approved notice and its possible effect on the ability of these petitioners to rely on Ulvin's charge. The issue of court-approved notice is, therefore, not raised on this record.

Even were the issue present, however, court-approved notice is irrelevant to any issue in this proceeding. In *Hoffman-LaRoche, Inc. v. Sperling*, 493 U.S. 165 (1989), this Court decided that a district court could play a role in prescribing the terms and conditions of notice to potential members of a class. The Court did not decide anything with respect to the substantive charges of the plaintiffs in that case. The fact that the court may approve the terms of a notice sent by a representative plaintiff to potential opt-in plaintiffs does not have any bearing on the validity of the claims of persons responding to that notice. The second question presented by petitioners, therefore, is also not present. These petitioners were primarily already involved in the case before the notice was sent, and even had these petitioners all responded to a court-approved notice, that fact is irrelevant to any determination of the validity of their claims.

CONCLUSION

For these reasons, respondent respectfully requests that the Petition for Writ of Certiorari be denied.

Dated: 1-6, 1992

Respectfully submitted,

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APPENDIX

CHARGE OF DISCRIMINATION

EEOC 265890003

MINNESOTA DEPARTMENT OF HUMAN RIGHTS
UNDER CHAPTER 363
AND EEOC

Ms. Doris Anderson
(612) 824-5411
5536 Colfax Avenue South
Minneapolis, MN 55419
Hennepin County

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME

Name Northwestern National Life Ins. Co.
No. of Employees/Members In excess of 50
Telephone Number Include Area Code:
(612) 372-5432
20 Washington Avenue South
Minneapolis, MN 55440

Cause of Discrimination Based on *(Check appropriate box(es))*

- ☐ RACE
- ☐ COLOR
- ☐ SEX
- ☐ RELIGION
- ☐ NATIONAL ORIGIN
- ☒ AGE
- ☐ RETALIATION
- ☐ OTHER (Specify)

Date Most Recent or Continuing Discrimination Took Place February 29, 1988

The Particulars Are *(If additional space is needed, attached extra sheet(s)):*

I. *STATEMENT OF PERSONAL HARM*: I was employed by the above-named employer from November 5, 1956, until February 29, 1988. From, 1956 to 1975, I worked in numerous clerk positions. From 1975 to 1978, I worked as a Medical life Underwriter. From 1978 until my retirement, I worked as a Programmer Analyst. Starting in February 1987, the company began pressuring me to take early retirement by downgrading my job responsibilities, implying that I may be laid off if I did not take early retirement. I believe I was pressured into early retirement because of my age.

II. *EMPLOYER'S REASON FOR ADVERSE ACTION*: My -employer claims the early retirement program was not discriminatory.

III. *STATEMENT OF DISCRIMINATION*: I believe I have been discriminated against on the basis of my age, 59, in violation of the Age Discrimination in Employment Act of 1967, as amended, for the following reasons:

1. Throughout my employment, my performance evaluations have always been very good. I consistently received merit increases and promotions based on my performance.

2. In February of 1987, I received an early retirement offer. Although the benefits were good, they did not approach my salary and I turned down the offer. I later learned from my former supervisor, Joseph Ulvin, that I had been on a "hit list" of older employees that the company wanted to terminate in some manner.

3. I was the oldest Programmer analyst in my unit and department. My unit manager was a woman in her early 40s. All of the other Programmers (about 7 plus 2 contract employees) were under 40. Although I had been a programmer since 1978, I received the least interesting and challenging programming projects. Toward the end of my employment, I was primarily given short projects and maintenance work. Even though I was not given the opportunity to work up to my full potential, other, younger employees were being brought into the department to do work I could have done.

4. In the fall of 1987, Northwestern National Life Insurance Co. purchased a computer software package to replace and interface with the old system. Many meetings were held with the programmers in my unit to discuss interfacing the two systems. I was the only experienced programmer consistently excluded from those meetings. I knew that my exclusion from those meetings made me more vulnerable to lay offs or reductions in the work force because I would be the least familiar with the new program.

5. In the Fall of 1987, I was again offered early retirement as part of an offer extended to many of the older employees. Many of the older employees believed that if they did not accept early retirement, they would be laid off regardless of seniority. The Company sponsored seminars on how to cope with sudden unemployment and a subsequent job search. The consultant also discussed how we would cope with not taking early retirement and possibly being laid off anyway.

6. The company offered early retirement to employees over the age of 50 and pressured them to take it because those employees were earning higher salaries and had greater benefits than the younger employees. The company put pressure on employees over 50 to take the early retirement by giving them notice that a reduction in force would soon be necessary. Other employees who were not over the age of 50 but were over the age

of 40, were also forced out of the company through terminations and reductions in force.

7. I agreed to take early retirement because I thought that because of my age I would be laid off or terminated if I did not retire. My last date of employment was February 29, 1988.

8. Based on the above allegations it is my contention that my age, 59, is the reason the employer downgraded my positions, by passed me for promotion, and terminated my employment by forcing me to accept early retirement.

IV. *STATEMENT OF CLASS WIDE DISCRIMINATION ON THE BASIS OF AGE*: I believe that Northwestern National Life Insurance Company's treatment of me is part of a general pattern and practice of discrimination against individuals over the age of 40 by Northwestern National Life Insurance Company, and I am filing this charge in my behalf and on behalf of all other employees over the age of 40. Northwestern National Life Insurance Company has discriminated and continues to discriminate on the basis of age against its employees.

I declare under penalty of perjury that the foregoing is true and correct.

Date 9/30/88

/s/ Doris J. Anderson
Charging Party

Subscribed and sworn to before me this date.

Date 9/30/88

/s/ Jean Boler
Notary Public
Minnesota
Hennepin County

My Commission Expires
July 20, 1994